Analysis of Prime Minister Trudeau's

Paper on Constitutional Development in the N.W.T.

By Peter Russell

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Analysis of Prime Minister Trudeau's Paper on Constitutional Development in the N.W.T., August 3, 1977 - By Peter Russell, University of Toronto

A. Changes in Decision-Making Method:

The Prime Minister's paper reflects some important changes in the federal Government's method of developing policy relations on the constitutional and political future of the N.W.T.

1) Concentration of Power in Prime Minister's Office: The Special Representative for Constitutional Development in the N.W.T., Mr. Bud Drury, reports directly to the Prime Minister, not to the Minister of Indian Affairs and Northern Development. Mr. Allmand will chair an Ad Hoc Cabinet Committee on Constitutional Development in the North. But this Committee will not consider reports and recommendations until they have been presented to the P.M. by Mr. Drury. Mr. Drury will have his own staff seconded from the Federal and Territorial Governments. The role of D.I.A.N.D. will be basically to provide information and assistance on request.

It should be noted that this process not only by-passes the normal departmental channels of decision-making but also provides little opportunity for parliamentary participation. The House of Commons Standing Committee on Indian Affairs and Northern Development would only have an opportunity to consider the policy if and when it is translated into legislation and sent to Committee after second reading. While recent House debates do not exactly raise one's hopes for a careful parliamentary consideration of northern land claims issue, still it is only before a Standing Committee that native groups would have an opportunity to present their own point of view directly to Canadian M.P.'s. Without such an opportunity parliamentary perceptions are likely to be coloured entirely by the Government's presentation of the issues or northern tours arranged by opponents of native organizations. Already very damaging misconceptions have been formed in this way - in particular the opposition M.P.'s acceptance of the Prime Minister's insinuation that Dene and Inuit concern for cultural survival is racist.

It is submitted that from the native people's point of view it would be worthwhile pressing for an opportunity to make their own case to Parliament independently of any distorting filter imposed by the P.M. on his Special Representative, and they should have that opportunity before Government policy is firmly fixed in legislative form.

2) Consultation with "all Northerners": Mr. Drury's instructions specify that he should consult with "leaders of the Territorial Government, northern communities and native groups." Throughout the document, the desires of the Territorial Government for more autonomy from Ottawa, of local communities for more autonomy from Yellowknife and of the native people for a just land settlement are placed on a par. There is no recognition of the possibility that the concern of indigenous peoples to work out a reasonable social contract with the authority which has imposed its rule upon them entails a deeper moral claim than the desire of Canadians who have migrated North for more local autonomy.

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Further, it is clear that the 3 kinds of groups with whom the Special Representative is supposed to consult are not on a par in the consultative process. The Territorial Government is placed in a distinctly superior role. Territorial Government staff will work for Mr. Drury. At page 18, there is the statement that "The Territorial Government will be fully involved throughout the process." Just before this Territorial Councillors "representing constituencies" are promised invitations to participate "as approrpriate." These statements follow vague instructions to Mr. Drury "to arrange to hold meetings with the northern leaders in various parts of the N.W.T." At no point is there any recognition of the legitimacy of any of the established native organizations in the N.W.T. (C.O.P.E., Indian Brotherhood of the N.W.T. I.T.C., Métis Association of the N.W.T.) nor any commitment to consult with them. Indeed the statements on Page 18 could be interpreted as requiring Mr. Drury to have Territorial Councillors or officials attend any consultations with native groups.

3) Separation of Political-Constitutional Changes from Land Claims: While the paper acknowledges that Indians, Inuit and Métis show a "determination ... to get recognition and power through the settlement of their land claims," (p. 2) its whole approach is built on the premise that land claims must be negotiated in a separate process from that set out for shaping the political future of the North. Mr. Drury is to "co-ordinate his activities with those taking place concurrently in relation to the land claims put forward by northern native groups ..." (page 17). By taking the question of political rights and the distribution of political power out of the land claims negotiation, the governments may have made meaningful "negotiation" of land settlements difficult, if not impossible. For political power is (by the governments own admission) the crucial common denominator of the native group's approach to land claims in the N.W.T. The aim here is clearly to impose a political limit on what can be negotiated in the land settlement process.

B. Fixed Positions of the Federal Government

The paper states that in working towards solutions the emphasis should be on "flexibility, sensitivity and workability" (p. 19), that the Special Representative should "seek to arrive at agreement or consensus among the various groups consulted," (page 17) and that the Government is committed to "flexibility and openness of mind" (page 4). Still the paper, in defining the limits within which Mr. Drury must work, sets out certain positions which would appear to be non-negotiable. It suggests that those who are not willing to accept such positions are extremists whose aspirations are not "legitimate or timely" (page 2-3). The fixed positions are as follows:

1) Federal Government Must Retain Control of Non-Renewable Resources: The paper states that "national interest dictates" (p. 5) continuation of Federal Government control over the development of renewable resources. Royalties obtained from this type of development may be shared with Territorial Government and possibly with native groups as a result of land settlements. Also there must be close consultation and co-ordination of planning with Territorial Government and native groups in federal management of non-renewable resource activity. One reason for this is that the Government "contemplates" (page 6) that renewable resources, unlike non-renewable resources, may be owned and controlled by Territorial Government and possibly by native groups as a result of claims settlement.

2) Continuation of Territorial Government: It is not contemplated that there should be any fundamental change in territorial government. In discussing the kind of recommendations expected from Mr. Drury, the paper talks in evolutionary, gradualist terms about "modifying and improving the existing structures." Changes are to be administrative and statutory but not Constitutional. Constitutional guarantees of native political rights seem to be ruled out.

Three kinds of governmental change are indicated as being at least within the realm of negotiable possibilities. There are a) some devolution of powers from federal to territorial government, b) some devolution of power from territorial to local governments, and c) a possible division of the N.W.T. into 2 Territories either along roughly a North South axis or between the mainland and the Arctic Islands. The paper does suggest a range of proposals for some form of native self-government but all of these are to be realized at strictly a local or regional level through institutions which are to be subordinate or subsidiary to Territorial Government. This is only softened a tiny bit on Page 14 where it states that the Territorial Government "might" continue to exercise (among other things) "a supervisory role" in relation to all local government including any new regional authorities that might be set up.

3) Rejection of a Distorted Version of the Dene & I.T.C. Proposals: The paper turns thumbs down to the Prime Minister's Version of the kind of political change proposed by the Dene and the I.T.C. It rules these out because the paper claims they entail a division of governmental power based on race. However, it accepts division "along functional lines" which is based upon "common interests such as distinctions of language, culture and way of life; economic needs and opportunities; transportatio and communication facilities; potential revenue sources." (page 12). As an example of what it rules in, the paper refers to a North-South Division separating the Mackenzie Valley and Delta area from the Central and Eastern Arctic.

In analyzing this part of the paper it is important to see how the paper distorts the Dene proposal. The most recent Dene position (endorsed by, the Fort Fitzgerald Assembly in June 1977) proposes a tripartite division of the N.W.T. The boundaries of the 3 parts would be drawn so that there would be a Dene majority in one, an Inuit majority in another and a non-native majority in the third. But, subject to a residency requirement, all citizens would enjoy full political rights regardless of race in each division. Each division would design its own government to serve the needs of its people and would send delegates to constitute a Territory-wide council which, like a Metropolitan council in some municipal arrangements (hence the name "metro model"), would deal with "matters, issues and programmes of common concern."

To understand the full extent of the paper's distortion of the Dene position it is worth quoting the crucial passage of the paper in full:

> "In the North, as in the South, the Government supports cultural diversity as a necessary characteristic of Canada. However, political structure is something quite different. Legislative authority and governmental jurisdiction are not allocated in Canada on grounds that differentiate between the people on the basis of race." (p. 12)

These are two levels of distortion here. First, the Dene and Inuit desire to sustain and develop their distinct identity is branded racist in contrast to

the Canadian tradition of nurturing cultural diversity. Consider how the third sentence in the quoted passage would read if cultural diversity were substituted for the last word "race." Such a sentence would deny the raison d'etre of Quebec in Canadian Confederation. The distortion here is to imply that aspirations for cultural identity becomes racist when coupled with a proposal to use mechanisms of political structure to sustain identity. The second distortion is of the Dene's Metro Model itself, implying that it entails racially exclusive enclaves in which only members of a certain race would be permitted to exercise legislative authority or governmental power. This implication is demonstrably false.

Similarly, it could be shown that the paper distorts the Inuit Tapirisat proposals. Here the distortion takes another and rather ironic twist. For the original I.T.C. proposal which is branded here as racist and therefore unacceptable calls for a division of the N.W.T. much like the North-South division considered legitimate by the paper because it would be based on "functional lines" (i.e. language, culture, way of life, economics etc.)!

The paper states that the emphasis since 1975 in Indian and Inuit policy has been "on promoting and safeguarding the identity of these native people." (page 4) It is willing to contemplate political mechanisms for Native people that are clearly subservient to more senior governments in which natives cannot be a preponderant influence. Reserves, native wards in municipalities band councils, local and regional governments even though designed exclusive or primarily for native communities are not "racist." The implication that power becomes "racist" when the unit in which natives peoples might have a predominant influence is not subordinate to another territorial government is a hypocritical evasion of the central question - namely the kind and degree of governmental power which native people must have if they are to secure and develop their collective identity.

4) Proximity to C.O.P.E. Position: It is remarkable how closely the instructions which are to guide Mr. Drury's consultations, accomodate the land claims proposal submitted in May 1977 by C.O.P.E. on behalf of the Inuit people of the Western Arctic. That proposal assumed early government approval of the Mackenzie pipeline and called for the establishment of a regional Municipality subordinate to a territorial government with federal control of non-renewable resource development, the sharing of revenues with native corporations and a significant role for native institutions in the management of renewable resources. It is difficult to believe that the neat fit of the C.O.P.E. proposal with the Drury guidelines is simply a coincidence. But the openness of the Government to the position of one native organization and its apparently closed mind to those of 2 other (and much larger) native organizations casts serious doubt on the sincerity of its intention to move "in the direction of enabling all northerners to govern themselves in ways of their own choosing." (p. 4).

5) Provincehood for N.W.T. not inevitable: The paper does not rule out eventual provincial status for the N.W.T. However it suggests that alternatives to this long run goal should be considered. Such alternatives would include "Regional-municipality type government" (page 16). This section of the paper throws some cold water on the assumption that the N.W.T. must inevitably follow the same path of political evolution as the Prairie Provinces. But this, in turn, raises

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the question of why the government should so firmly rule out of consideration the Dene's "metro model" or the I.T.C. proposals which are clearly important alternatives to traditional evolution to provincehood.

C. Acceptable Means for Securing Native Rights

While ruling out The Government's version of the Dene and I.T.C. proposals, the paper does offer a number of "legitimate" devices for striking the "fine balance between minority and majority rights."

1) Within the Structure of Territorial Government. Here there are 5 suggestions. First, permanent consultative process might be built into Territorial Government so that on a designated list of subjects the advice of a native council would have to be sought before decisions were made. Second, Indians, Metis and Inuit might be given "proportionate" representation (proportionate to one another or to the non-native population?) on "major subsidiary" agencies of the Territorial Government which function in areas of particular concern to native people. Third, the Commissioner of the N.W.T. or the Minister of Indian Affairs and Northern Development might retain certain "reserve powers" (rather like the Lieutenant Governor and Governor General in relation to provincial government) to intervene and safeguard native interests. Fourth, some consideration might be given to a residence requirement for participation in Territorial elections shorter than 10 years but designed to go part way in meeting native concerns about being overwhelmed by a large, basically non-native, migrant electorate. Fifth some adjustment of electoral boundaries for municipal or territorial elections might be made which would strengthen native representation.

It is interesting that no mention is made of the device which has been featured in New Zealand's approach to aboriginal rights and is contemplated in the model recently developed in negotiating a land settlement with Yukon Indians - namely some guarantee of native representation on the governing territorial council.

2) At the local and regional level. It is scarcely a break-through to offer some scope for native self-government at the community or settlement level. But the more significant proposal is to suggest an "amalgamation of native group interests in regional institutions." These regional institutions would relate to a larger territory and have wide responsibilities - for example, education, land use control, game management and renewable resource development - than single community governments. Still their status would be that of "rural municipalities" subordinate to Territorial Government. While this seems to fall short of Dene and I.T.C. (but not C.O.P.E.) aspirations it might be interesting to see how far this is merely a symbolic point. If the regional municipality is to have the same kind of relationship to the Territorial Government that southern municipalities have to Provincial Governments, then one might ask why the paper suggests that the establishment of Regional Municipality-type government makes evolution to provincial states more doubtful. Perhaps there is room for genuine negotiations here between the Dene, I.T.C. and Federal Government.

3) Through Land Claims Settlement. The paper is sprinkled with suggestions that land settlements might produce native institutions possessing a measure of governmental power. Included, second from last, and in somewhat insulting language, in the list of specific subjects which Mr. Drury might discuss with northerners is "the political role if any of native institutions for economic development deriving from claims settlements" (page 2). At page 6 the paper refers to the possibility of native groups attaining a share of the ownership and control of renewable resources and of some land. Later on there is a vague reference to "Indian/Inuit control of education within their communities" (page 10). But all of these possibilities are subject to the overriding limits on the kind of political institutions which the Government finds legitimate for natives - they must be local and subordinate.

The real question here is how can the Dene, the I.T.C. or the Government carry on land settlement negotiations at the same time Mr. Drury is carrying out his "consultations." His consultations are designed to preclude what the Government believes the largest native groups are pressing for in land settlement negotiations. For the Government, the answer is clear - land settlement negotiations can only continue if the native groups basically alter their position. The options for the Dene and the I.T.C. are more difficult. If they are to continue negotiating at all they must either alter their position to meet the government's pre-conditions or else try to persuade the Federal Government, Mr. Drury and perhaps Parliament, that the Prime Minister has seriously distorted their position, that their proposals are fundamentably compatible with the best principles of Canadian Government and can be fitted within Mr. Drury's guidelines.

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